Tan Teik Soon & Ors v Public Prosecutor

HIGH COURT (ALOR STAR) — CRIMINAL APPEAL NO 41–01 OF 2003
ZAINAL ADZAM JC
29 MARCH 2004

Criminal Procedure — Forfeiture — Gaming and Betting Offences — Appellants convicted under s 6(1) of Betting Act 1953 — Magistrate forfeited sum of RM9,179.80 from appellants — Whether magistrate's interpretation of s 6(4) of the Act correct — Whether magistrate erred in holding that money seized was used or to be used for betting — Whether magistrate failed to appreciate that appellants charged as punters instead of bookmakers — Betting Act 1953 s 6(1), (3)(a), (4)

The three appellants in this case were convicted by the Magistrate's Court, Alor Star for an offence under s 6(1) of the Betting Act 1953 ('the Act'). The appellants pleaded guilty and the prosecuting officer stated that the facts of the case was as per the charge. All the appellants admitted and acknowledged the exhibits of the case tendered by the prosecuting officer which consisted of slips of paper and books which were normally associated with the offence of betting, the expert's report itself and a sum of RM9,179.80 recovered from the three appellants. After hearing the mitigation plea the magistrate fined each of the three appellants RM1,500 in default of five months' imprisonment. The sum of RM9,179.80 was ordered to be forfeited to the Treasury. The appellants appealed against the order of the magistrate forfeiting the sum of RM9,179.80 made under s 6(4) of the Act. The grounds of appeal were: (1) the learned magistrate wrongly interpreted s 6(4) of the Act; (2) that the magistrate erred when he held that the money seized was used or to be used for betting; and (3) that the magistrate failed to appreciate that the appellants were charged as punters and not bookmakers.

Held:

(1) For an offence under s 6(1) of the Act it is not always necessary to prove that the accused was betting or wagering at a common betting-house. Section 6(1) of the Act carries three limbs and they are to be read disjunctively. A person commits an offence if he bets or wagers under three circumstances; ie in a common betting-house; secondly, with a bookmaker on any premises; and thirdly, by any means. The appellants' first ground of appeal was without merit and the cases on common gaming-houses on this point referred to by the learned counsel therefore were not relevant (see para 3).

(2) The third ground of the appellant's appeal was sufficiently met by the learned magistrate's grounds of judgment. The court agreed with the magistrate's finding on this issue (see para 4).

(3) The charge against the appellants was straight forward in that it didnot involve any legal or factual difficulties. The appellants were represented by a counsel and after pleading guilty to the charge admitted and acknowledged all the exhibits tendered by the prosecution including the money seized from them. If the money was indeed not used or

intended to be used for the purpose of betting or wagering, the appellants should have immediately raised the matter or informed the magistrate when they were asked to admit to all exhibits tendered by the prosecution. To raise the matter after their conviction was an after-thought. The unqualified plea of guilty and the admission of the sum of money being part of the offence committed by the appellants together with the exhibits tendered by the prosecution was sufficient, in a summary trial, for the learned magistrate to form an opinion that the money was used or intended to be used for purposes of betting or wagering under s 6(4) of the Act (see paras 7 and 9).

(4) Section 6(4) of the Act is clear that the court could forfeit for offences under s 6(1) or s 6(3)(a), ie being a punter or a bookmaker respectively (see para 8).

[Bahasa Malaysia summary

Ketiga-tiga perayu dalam kes ini telah disabitkan oleh Mahkamah Majistret Alor Setar bagi kesalahan dibawah s 6(1) Akta Pertaruhan ('Akta tersebut'). Perayu-perayu telah mengaku bersalah dan pegawai pendakwaraya telah menyatakan bahawa fakta-fakta kes tersebut adalah seperti yang dinyatakan dalam pertuduhan. Kesemua perayu mengakui eksibit-eksibit kes yang dikemukakan oleh pegawai pendakwaraya iaitu slip-slip kertas dan buku yang menurut laporan pakar biasanya dikaitkan dengan kesalahan bertaruh, laporan pakar tersebut serta wang sebanyak RM9,179.80 yang telah diperolehi daripada ketiga-tiga perayu. Setelah mendengar mitigasi yang dibuat oleh peguam bela, majistret telah mengenakan denda sejumlah RM1,500 terhadap setiap perayu dengan 5 bulan penjara sekiranya jumlah tersebut ingkar dibayar. Wang sebanyak RM9,179.80 pula diperintahkan agar dilucuthakkan kepada Perbendaharan. Perayu-perayu kini merayu terhadap perintah majistret melucuthakkan wang sebanyak RM9,179.80 yang dibuat dibawah s 6(4) Akta tersebut. Alasan-alasan rayuan adalah bahawa; (1) majistret telah khilaf dalam menafsir s 6(4) Akta tersebut; (2)majistret telah khilaf apabila beliau memutuskan bahawa wang yang dirampas telah digunakan atau akan digunakan bagi pertaruhan; dan (3) majistret juga telah gagal menyedari bahawa perayu-perayu telah dituduh sebagai penaruh dan bukannya penerima taruhan.

Diputuskan:

(1) Bagi kesalahan dibawah s 6(1) Akta tersebut, adalah tidak semestinya untuk membuktikan bahawa tertuduh berjudi atau bertaruh di rumah pertaruhan awam. Seksyen 6(1) Akta tersebut mempunyai tiga bahagian dan ianya patut dibaca secara disjunktif. Seseorang melakukan kesalahan jika dia bertaruh di bawah tiga situasi; yakni di rumah pertaruhan awam; keduanya, dengan penerima taruhan di mana-mana premis; dan ketiga, melalui apa jua cara. Oleh itu, alasan rayuan perayu yang pertama adalah tanpa merit dan kes-kes yang dirujuk oleh peguam terpelajar berkenaan poin ini adalah tidak relevan (lihat perenggan 3).

(2) Alasan ketiga perayu telah dijawab secukupnya oleh alasan penghakiman majistret. Mahkamah bersetuju dengan penemuan majistret berkenaan isu ini (lihat perenggan 4).

(3) Pertuduhan terhadap perayu-perayu adalah jelas dan tidak mengandungi apa jua kesulitan perundangan ataupun fakta. Perayu-perayu telah diwakili oleh peguam dan setelah mengaku bersalah terhadap pertuduhan, telah mengakui kesemua eksibit yang dikemukakan oleh pihak pendakwa termasuk wang yang dirampas daripada mereka. Sekiranya wang tersebut sememangnya tidak digunakan atau tidak diniatkan untuk tujuan bertaruh, perayu-perayu sepatutnya membangkitkan perkara tersebut dengan segera atau memaklumkan majistret apabila diminta mengakui kesemua eksibit yang dikemukakan oleh pihak pendakwa. Untuk membangkitkan perkara tersebut setelah mereka disabitkan bersalah jelas merupakan sesuatu yang difikirkan kemudian. Pengakuan bersalah tanpa syarat dan pengakuan bahawa jumlah wang tersebut adalah sebahagian daripada kesalahan yang dilakukan oleh perayu-perayu bersama dengan eksibit-eksibit yang dikemukakan oleh pihak pendakwaan adalah mencukupi, dalam perbicaraan terus, bagi majistret terpelajar untuk berpendapat bahawa wang tersebut digunakan atau diniatkan untuk digunakan untuk tujuan bertaruh dibawah s 6(4) Akta tersebut (lihat perenggan 7 dan 9).

(4) Seksyen 6(4) Akta tersebut jelas memperuntukkan bahawa mahkamah boleh merampas bagi kesalahan di bawah s 6(1) atau s 6(3)(a), iemasing-masing sebagai penaruh atau penerima taruhan (lihat perenggan 8).

Notes

For cases on forfeiture in gaming and betting offences, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1685-1692.

Cases referred to

Chin Ban Keat v Rex [1949] MLJ 266 (folld)
Nadeson v PP [1996] 1 MLJ 63 (distd)
PP v Abdul Aziz [1978] 2 ML] 155 (distd)

Legislation referred to

Betting Act 1953 s 6(1), (3)(a), (4)
Common Gaming Houses Act 1953

Appeal from:

Manjit Singh (Manjit & Company) for the appellants.
Azeezi bin Nordin (Attorney-General's Chambers) for the respondent.

Zainal Adzam JC:

Appeal

[1] The three appellants in this case were convicted by the Magistrate's Court, Alor Star for an offence under s 6(1) of the Betting Act 1953 ('the Act'). Before the magistrate's court the appellants pleaded guilty and the prosecuting officer stated that the facts of the case was as per the charge. All the appellants admitted and acknowledged the exhibits of the case tendered by the prosecuting officer which consisted of slips of paper and books which according to the expert's report are normally associated with the offence of betting, the expert's report itself and a sum of RM9,179.80 recovered from the three appellants. After hearing the mitigation plea by the learned defence counsel the magistrate fined each of the three appellants RM1,500 in default of five months' imprisonment. The sum of RM9,179.80 was ordered to be forfeited to the Treasury. The appellants now appeal against the order of the magistrate forfeiting the sum of RM9,179.80 made under s 6(4) of the Act.

[2] The grounds their petition of appeal can be summarised as follows: ie firstly, that the learned magistrate wrongly interpreted s 6(4) of the Act in failing to appreciate that it was not established that what the premise involved was a common betting-house; secondly, the magistrate erred when he decided that the money seized was used or intended to be used for betting when there was nothing to support the magistrate's opinion; and thirdly, the magistrate failed to appreciate that the appellants were charged as punters and not as a bookmakers. Before me the learned counsel for the appellants however submitted only on the second ground and referred to cases decided under the Common Gaming Houses Act 1953 as, according to him, there are no decided cases on the point under the Act.

[3] Before I proceed further I wish to deal with the issue of whether under s 6(4) of the Act the prosecution need to prove that the appellants were arrested at a common betting-house although it was not taken up by the appellant's counsel in his submission. In my opinion for an offence under s 6(1) of the Act it is not always necessary to prove that the accused was betting or wagering at a common betting-house. Section 6(1) of the Act carries three limbs and they are to be read disjunctively. According to that provision a person commits an offence if he bets or wagers under three circumstances; ie firstly, in a common betting-house; secondly, with a bookmaker on any premises; and thirdly, by any means. The appellants' ground of appeal on this issue is thus without merit and the cases on common gaming-houses on this point referred to by the learned counsel therefore is not relevant.

[4] The third ground of the appellants in my view is sufficiently met by the learned magistrate's grounds of judgement. I agree with his finding on this issue which he stated as follows:

Pada pendapat Mahkamah ini, s 6(1) untuk kesalahan 'bets' atau 'wager' dan s6(3)(a), (b), (c) untuk 'bookmaker' adalah dua bentuk kesalahan yang jelas berbeza di bawah tajuk besar s 6 yang berbunyi 'betting in a common betting house, and book making'. Namun demikian, Mahkamah ini berpendapat peroperasian s 6(4) adalah merangkumi 'sabitan' yang direkodkan sama ada sebagai orang yang bertaruh di bawah s 6(1) atau orang yang mengutip pertaruhan di bawah s 6(3) Akta Pertaruhan ini. Perkataan '… this section …' pada baris kedua s 6(4) pada pendapat Mahkamah ini adalah merujuk kepada tajuk besar s 6 Akta Pertaruhan ini sendiri iaitu 'Betting in a common betting-house, and book making' dan bukannya bermaksud seperti yang dihujahkan oleh peguambela terpelajar OKT-OKT ini.

[5] The only ground left is the issue of the learned magistrate's finding that the sum of money seized from the appellant was in his opinion used or intended to be used for betting or wagering. In his judgment the learned magistrate based his opinion on the fact that the appellants pleaded guilty without qualification to a charge under s 6(1) of the Act. The learned magistrate also stressed that the expert report stated that persons who are in possession of the exhibits as tendered in court are illegal punters. He therefore concluded that there is a strong inference that all the articles seized are directly linked to the offence of betting or wagering for which the appellants were convicted. However, the learned magistrate did not touch on the fact that the expert report did not include the money seized from the appellants. On this issue the learned counsel for the appellants submitted that there were no facts tendered by the prosecuting officer nor was any evidence led on the matter to enable the learned magistrate to form his opinion.

[6] The two cases cited by the learned counsel, ie *Nadeson v Public Prosecutor* [1996] 1 MLJ 63 and *Public Prosecutor v Abdul Aziz* [1978] 2 MLJ 155 are authorities which discourage magistrates from being content to note merely 'facts as per charge' upon a plea of guilty by the accused. This direction has been laid down long ago as far back as 1932 by the Court of Appeal. According to the authorities, 'the aim of the court is to record the facts alleged by the prosecutor and admitted by the accused and to satisfy itself that they constitute the offence charged' (per Jopling J in *Chin Ban Keat v Rex* [1949] MLJ 297). Perusing the two authorities cited by the learned counsel, I find that apart from not recording the facts of the case by the magistrates, there were other grounds for the appellate courts to nullify the convictions. In *Nadeson v PP* the High Court was not satisfied that the appellant understood the charge against him and in fact found that the charge was defective. In addition, in that case there was a possible defence available to the appellant. In *PP v Abdul Aziz* and also in *Nadeson v PP* the accused persons were not represented by a defence counsel.

[7] In the present appeal, all the three appellants were represented by a defence counsel before the magistrate's court. Although the authorities cited direct that facts of the case should be taken by the magistrate upon a plea of guilty, with due respect, I am making an exception in this case based on a few factors. The charge against the appellants is a straight forward one which does not involve any legal or factual difficulties. The appellants were

represented by a defence counsel and after pleading guilty to the charge admitted and acknowledged all the exhibits tendered by the prosecution including the money seized from them. If the money was indeed not used or intended to be used for the purpose of betting or wagering, the appellants should have immediately raised the matter or informed the magistrate when they were asked to admit to all exhibits tendered by the prosecution. Not only was that fact known to them but at that point of time they had the services of a defence counsel. To raise the matter after their conviction is clearly an after-thought. On record the only reference the learned counsel for the appellants made to the money seized in the magistrate's court was when he submitted in mitigation as follows:

> Selanjutnya, saya berhujah wang RM9,179.80 dikekalkan kepada OKT-OKT kerana mereka adalah 'punter' dan bukan 'bookie'.

[8] Section 6(4) of the Act is clear that the money to be forfeited by the court can be for an offence under s 6(1) or s 6(3)(a), ie being a punter or a bookmaker respectively. Apart from that, it is also not the same as pointing out to the magistrate that the seized money was never intended by the appellants to be used or in fact used for betting.

[9] Under the circumstances, I am therefore satisfied that there were sufficient facts before the learned magistrate to form an opinion that the money seized from the appellants was either used or intended to be used for betting or wagering. The unqualified plea of guilty and the admission of the sum of money being part of the offence committed by the appellants together with all the other exhibits tendered by the prosecution is sufficient, in a summary trial, for the learned magistrate to form an opinion that the money was used or intended to be used for purposes of betting or wagering under s 6(4) of the Act. The expert report need not include the analysis of the money seized as it goes without saying that betting or wagering is normally done with money. Based on all the aforesaid reasons this appeal is therefore dismissed. Lastly, I wish to emphasise here that this decision is peculiar to the facts of this case and should not be taken as encouraging the subordinate courts not to record the facts of the case or to admit evidence in cases where the accused person pleads guilty.

Appeal dismissed.

Reported by R Lalitha